

**BAY AREA LEGAL AID
LEGAL ADVICE LINE
POLICIES AND PROCEDURES
REV. 2011**

POLICIES AND PROCEDURES

TABLE OF CONTENTS

I. Eligibility	1
A. Determination of LSC Eligibility	1
B. Opening LSC eligible case by hitting “save/send”	5
C. Case now open	5
D. CSR eligibility	6
E. Various illustrative scenarios after case opened and advice provided	7
II. Fee-generating Cases	8
A. Definition	8
B. General requirements	8
III. Stealthing Cases	9
A. Type of cases appropriate for stealth	9
B. Stealth process	9
IV. No-shows	10
V. LAL processes	11
A. When to open more than 1 case in same calendar year for same client	11
B. Duplicating an existing case	11
C. Reopening an existing case	11
D. Sufficiency of notes	12
E. Life of an advice-only case	12
F. Life of a scheduled case	12
G. Closing cases: to close your own case after it is reviewed	13
H. Duplicate cases	13
I. PHONE OUTAGE	13
J. PRIME OUTAGE	14

POLICIES AND PROCEDURES

I. Eligibility

A. Determination of LSC eligibility

1. Legal issue is within BayLegal priorities and not prohibited by LSC
 - LSC prohibited legal assistance includes criminal proceedings, challenging criminal convictions, prisoner litigation, class actions, organizing activities, abortion related litigation, school desegregation, military desertion
2. Case or applicant is within the following BayLegal service counties:
 - Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara
 - Case already filed in one of these counties (use court address in client address field and list client address in case notes or contacts)
3. Applicant is citizen or fits within noncitizen exception (CFR 1626)
 - Noncitizen has been battered or subjected to extreme cruelty
 - Can be act or threatened act of violence or isolation that may lead to mental or physical harm
 - May include acts that in and of themselves may not initially appear violent but are part of a pattern of violence
 - A “battered/subjected to extreme cruelty” client must have a legal issue that has a nexus between the abuse and the type of legal assistance offered
 - Meets U-visa or T-visa criteria
 - Application need not be pending
 - A “U-Visa” client must have a legal issue that has a nexus between the abuse and the type of legal assistance offered
 - Noncitizen is a legal permanent resident (LPR)
 - Noncitizen has a citizen spouse or child and has filed an application for adjustment of status to LPR and application has not been rejected.

- Noncitizen is under 21, unmarried, has a citizen parent and has applied for LPR status (and hasn't been rejected and no further appeals)
- Noncitizen is a current refugee (status granted and passport stamped refugee)
- Noncitizen is a current asylee (asylum has been granted and passport stamped asylee)
- Noncitizen has lawful conditional entry because of persecution or natural disaster and was granted this status before 4/1/1980
- Noncitizen is lawfully present as a result of withholding of deportation status
- Noncitizen is from Mariana, Palau, Micronesia or Marshall Islands
- Noncitizen is an H-2 visa agricultural worker (can only assist with housing issue)
- Other related issues
 - We may provide assistance that will help victims escape the abusive situation, ameliorate the current effects of the abuse or protect against future abuse (i.e. for battered and extreme cruelty exception that isn't T-visa situation there must be a nexus between abuse and type of legal assistance offered).
 - Intake and referral for ineligible noncitizens is ok as "other service"

4. Financially eligible applicants (1611) - "sufficient questions" is standard to determine following info p/CSR handbook

- Definitions
 - Assets
 - Cash or other resources of applicant or applicant's household that are readily convertible to cash and are actually available to applicant, not exceeding \$10,000 per person (plus \$5,000 for each additional family member)
 - Exclude principal residence, vehicles used for work, assets used in producing income, assets exempt from

attachment under state or federal law (e.g. retirement and pension plans)

- In calculating the total value of a client's assets, first exclude the principal residence, work tools, retirement/pension plans and one vehicle. Take all of the remaining assets and determine their equity value (fair market value – monies owed and being paid on assets).

- Income

- Household is defined by BayLegal policies as those persons legally responsible for each other (e.g. parents and minor children; spouse or registered domestic partners; guardian/conservator)
- Actual current annual total cash receipts before taxes of resident members of household, who contribute support and are legally obligated to contribute support.
- If adult applicant is living with parents, you would NOT include parents' income but you would impute as income the fair rental value of room.
- If applicant is self employed, then it would be income minus expense.
- Income includes training stipends, alimony, child support, and any other regular and recurring sources of financial support currently and actually available to applicant (CV to check on how student loans are counted)
- Value of food and rent in lieu of wages is not income

- Financial Eligibility Policies

- Annual income may not exceed 125% of Federal Poverty Guidelines
- DV applicant (do not consider the income or assets of the alleged perpetrator)

- LSC does not preclude us from assisting applicants over our income and asset limits as long as we serve them with non-LSC funds
- If the applicant's income is derived solely from a governmental program for low-income individuals or families, you don't need to make an independent determination of income or assets (you must note this in Form 1611).
- Exceptions to the annual income ceiling
 - If applicant does not exceed asset limit, and
 - The applicant is seeking assistance to maintain benefits provided by a government program for the poor, or
 - The applicant's income is primarily committed to medical or nursing home expenses and if you don't count that amount, they would qualify, or
 - The applicant's income does not exceed 200% of the applicable federal Poverty Guidelines amount, and
 - The applicant is seeking legal assistance obtaining government benefits for the poor, or
 - The applicant is seeking to obtain or maintain government benefits for the disabled
 - The applicant's income does not exceed 200% of the applicable federal Poverty Guidelines amount, and you determine they should qualify for services when you consider:
 - Current income prospects (seasonal work), and/or
 - Unreimbursed medical expenses and medical insurance premiums, and/or
 - Fixed debts and obligations, and/or
 - Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or

educational activities in preparation for employment and/or

- Non-medical expenses associated with age or disability, and/or
- Current taxes, and/or
- Other significant factors that the recipient has determined affect applicant's ability to afford legal assistance

B. Opening LSC eligible case by hitting “save/send”

1. When you hit save/send you are "accepting" the case for service. Acceptance occurs when a staff member determines applicant qualifies and indicates acceptance of case through assignment of case number. For LAL purposes, it's at point you hit save/send. Case is now LSC eligible.

2. If case cannot be opened because client is ineligible, you must open an “Other Service” record to memorialize the referral and completing the following information on the OS record: persons helped, service provided (121-123, 129), county, problem code and hours spent.

C. Case Now Open

1. Intake Page 1

- Confirm with client that phone number listed and address are safe contacts. If so, check the “safe” boxes next to each category. If not, leave boxes unchecked and explain in the Case Notes section.
- Include the full name of any additional opposing parties to the client. In housing cases, for example, this would include client’s roommates.
- If the Opposing Party is a person, include an identifier under the “User Adverse ID” category. This is usually the date of birth or SSN for family cases, or a title (i.e. “Landlord”) for housing cases.
- Select marital status from the options given. If client is married, include non adverse spouse’s full name in the appropriate section. If client is a minor or receiving advocacy assistance, list the parent/assistant’s name in this section as well.

2. Intake Page 2

- Check the “Unduplicated Service” box.
- Check the “Disabled” and “Domestic Violence” boxes if appropriate (clts should be self-identifying).
- Select the appropriate choices for Living Arrangements, Speak English, Language, Race, and Race 2. If client refuses to state race, leave as “X” (not filled out) and include an explanation under Case Notes.
- Select the problem code and special problem code (“Special Pcode”). You might have to finish the intake before knowing what special problem code to choose.
- After phone intake is completed, come back to Intake Page 2 to fill out the appropriate Funds (funding code) section, as well as the Advocate and Office sections (see section on Closing Cases).

3. Intake Page 3

- Check the CSR-Eligible box once advice is given.
- Add time to case and click on Sum Time to display total time spent on the case (see section on Closing Cases).

D. CSR Eligibility

1. Legal advice

- Consists of legal assistance specific to client's unique circumstances and involves legal analysis tailored to client's factual situation.
- Applying legal judgment in interpreting facts and applying law to those facts.
- Must be actually provided to client by phone or follow-up letter (if letter is undeliverable then not CSR eligible)

2. Time record

- At least one time record is required per case

3. De-selecting a case as non-CSR-eligible

- LSC-eligible cases that are not reportable as CSR-eligible cases must be deselected. The CSR-box must be unchecked and a reason for deselecting indicated:
- More common reasons to de-select
 - Case properly opened and client withdrew before legal assistance could be given
 - Client gave the program erroneous information at intake and the correction showed that the client was ineligible (However, if the client was ineligible at the time of intake, the case may not be counted.
 - Administrative or computer error caused a case to be opened
 - Duplicate case files

E. Scheduling

1. Scheduling a Case

- Once a case has been opened and advice given, you will need to determine if the client fits within BayLegal's Case Acceptance Guidelines (CAGS) for scheduling purposes. The Case Acceptance Guidelines may vary by County because they are based on client-centered needs within a county, alternative resources, local office expertise and staffing constraints. At present, BayLegal has drafted CAGS for all priority areas of law specifically, family, immigration, housing, public benefits, health and consumer. If a case falls within CAGS, immediately schedule client in appropriate outlook calendar and provide client with appointment details. It is imperative that you reiterate to the client that the appointment is NOT a promise of full representation, but merely a further evaluation of their case. Inform the client of any documents they may need to bring with them to the appointment.

2. Outlook Calendar

- Each office has dedicated calendars in Outlook with appointments for all of the areas of law that the LAL may schedule. The calendars contain relevant information for the client: location of appointment, directions, contact information for changes to appointment, documents to bring to appointment etc. The calendars will reflect the number of intake appointments available for that week. Do not schedule clients more than four weeks out because it increases the likelihood of no

shows. If there are no appointments available, please speak to LAL MA for possible stealthing.

F. Various illustrative scenarios after case opened and advice provided:

1. Conflict is discovered after the fact. Case remains LSC and CSR eligible but further services should cease.
2. OP makes more than \$75,000. Case remains LSC- and CSR-eligible unless:
 - The parties continue to live together and there's no DV because then the \$75K would put household over income. If this is the case, you must de-select.
 - This is a "fee-generating" case question which, as indicated below, does not apply when we are just providing a client advice and counsel
3. Upon follow-up callback, client tells us that they are represented by counsel. Case is still LSC- and CSR-eligible. It is not an ethical violation to give a represented client advice, but we cannot schedule. However, given limited resources, represented clients should not be served.

II. Fee-generating cases

A. Definition

1. A case which, if undertaken on behalf of an eligible client by a private attorney, may reasonably be expected to result in a fee for legal services from an award to the client from public funds or opposing party.
2. Fee-generating cases are those where OP's income exceeds \$75,000 per year or the community assets (excluding home) exceeds \$100,000 in value. The San Francisco Bar Association has provided written instructions that raise the OP income limit to \$125,000.
3. This section does not apply to advice and counsel on the legal advice line. It only applies when BayLegal is trying to determine whether to offer the client full representation.

B. General requirements

1. BayLegal may not provide legal assistance in a fee-generating case unless:

- The case has been rejected by the local lawyer referral service or two private attorneys, or
- The local lawyer referral service or two private attorneys won't consider without a consultation fee

2. BayLegal may provide assistance without referring if:

- Applicant is seeking certain benefits under 42USC401, 42USC1381, SSI etc.
- BayLegal receives letter from private bar that attorneys won't take these types of cases
- MA determines that referral to private bar is not possible because:
 - Documented attempts to refer have been futile
 - Emergency circumstances compel immediate action before referral can be made, but the client is advised that referral will be attempted at a later time (e.g. DV advice on safety planning and RO; UD advice after client receives 3 day notice or is served with Summons and Compliant for Unlawful Detainer)
 - Recovery of damages is not the principal object of the recipient's case and statutory attorneys fees not likely

III. Stealthing Cases

A. Type of cases appropriate for stealth

1. A compelling case that is within the local office case acceptance guidelines (CAGS) but there are no appointments.

B. Stealth process

1. LAL will provide advice and counsel and close case.
 2. LAL will email LO attorneys (as identified by LO MA) with relevant expertise and offer case as stealth (include pitch and compelling facts in body of email). LAL should carbon copy (cc:) LO MA. Review will occur within 1 week and if LO attorney decides to take case, LO attorney will re-open case, contact client and put case in own office and staff number.
- LO Attorneys/Designees to receive stealth requests:

- SF
 - Family – Minouche Kandel and Staci Martin
 - Health – Mike Keys
 - Housing – John Carella and Phil Morgan
 - Public benefits – Chantal Tien and Don Medearis
- AL
 - Family – Ariella Hyman
 - Health – Ariella Hyman
 - Housing – attorney of the week
 - Public Benefits – Ariella Hyman
- SC
 - All categories – Julie Patiño and attorney that practices in substantive area
- SM
 - Family – Tulin Acikalin
- CCC
 - All categories - Susun Kim and attorney that practices in substantive area

2. If case is not within CAGS, but it addresses a systemic issue:

- LAL will provide advice and counsel and close case
- LAL will email LAL MA and LO MA re case, identifying the perceived systemic issue in body of email.

IV. No-shows

A. When LAL schedules a client, the case must be transferred to the LO number and the LO appropriate staff number.

B. If the client does not show up, LO should leave case open, transfer the case back to office 90, change staff number (SNUM) to same as intake worker number and make note in case notes that client was a no-show.

C. LO should also note if client should NOT be re-scheduled (e.g. client no-showed too many times).

D. LAL should close case and check “No Show” box on Intake Page 3.

V. LAL processes

A. When to open more than 1 case in same calendar year for same client:

1. Legal issues fall into different problem categories

- Consumer (00+)
- Education (10+)
- Employment (20+)
- Family (30+)
- Juvenile (40+)
- Health (50+)
- Housing (60+)
- Income Maintenance (70+)
- Individual Rights (80+)
- Miscellaneous (90+)

2. Legal issues involve different potentially adverse parties even if same problem code or category

3. Legal issues relate to substantially differing underlying facts

4. Legal issues are in different forums or different court case numbers

B. Duplicating an existing case

1. In duplicating a case, the most important thing to remember is that most of the information from the client’s record does NOT get transferred over to the new record. You must manually enter all of the data that is missing on the eligibility slip and the case. You may need to connect the cases using the master case designation, if appropriate.

C. Reopening an existing case

1. When re-opening an existing case, please note in case notes the original date the case was closed, the date it was re-opened and the reason for re-opening. If new advice is given or additional facts collected, please note in case notes. Close case with highest level of service. You do not need to re-open case if you are just adding or correcting information like a phone number that does not require you to give new legal advice.

D. Sufficiency of notes

1. LSC requires that case notes be sufficient to support the level of assistance selected by the program to close the case.
2. Since we close cases to advice and counsel, all case notes should state a concise statement of the legal issue / relevant facts / the advice given based on the facts.

E. Life of an advice-only case

1. At end of call or soon thereafter, LALAS should finish notes and transfer case to SNUM 9100 which will be a temporary holding spot for cases that need to be reviewed for closing. Appropriate cases should also at this time be exported as follows.
 - LAV and CHAP databases – export and close
2. The case will be reviewed for substantive legal advice and technical accuracy
 - If, after review, a call back to the client is required or a correction must be made, the case will be placed back into intake worker's SNUM, "reviewed" box will be checked and instructions will be entered in case notes. Intake worker will make corrections or call client back, indicate in case notes that this has been done and then transfer back to 9100.
 - If after review, no corrections are required, the case will be closed to intake worker's SNUM.
3. For LAL advice-only cases, closed cases will ultimately rest in the intake worker's SNUM.

F. Life of a scheduled case

1. All cases should have at a minimum some legal advice in order to mark as a CSR eligible case.
2. Note in case notes date and time of appointment
3. Transfer case to local office number
4. Change SNUM to local office designation
5. Case remains open

6. Exporting to databases:

- LAV – exported by LAL, but not closed
- CHAP – exported by LO staff, not LAL

G. Closing cases: to close your own case after it is reviewed

1. Go to Intake Page 3

- Click on "Close Date" button
- Select "Reason Closed" - usually "A" for advice and counsel on LAL
- Select "Main Benefit"
- Click on "Sum Time" button

2. Go to Intake Page 2

- Confirm it is under your SNUM and LAL office number 90

H. Duplicate cases

1. If you open a case, provide advice and counsel and later realize there was already a case with same issues in same calendar year, then it may be a duplicate case. If there is already time in both cases and one may be brief service case, then keep both cases. The case with the highest level of service should be marked as unduplicated and CSR. It's ok to leave the LSC box checked. The other should be marked as duplicated and have a reason for non-csr added on pg 3. Finally, join the cases by making the CSR case the Master case on intake page 1, and then associating the other case with it.

I. PHONE OUTAGE

1. Contact LAL MA immediately

2. If LAL MA is unavailable, contact Tony White first and if no response within 15 minutes contact Tony Curoso

- Tony White
agwhite@baylegal.org
510.387.5055 cell
- Tony Curoso

tcuroso@ATI-CTI.com
510.923.9205 cell

3. Before contacting either Tony, please have a detailed description of the problem (dropped calls, queues etc).

J. PRIME OUTAGE

1. Contact LAL MA immediately
2. If LAL MA is unavailable, contact Tony White
 - Tony White
agwhite@baylegal.org
510.387.5055 cell
 - Before contacting Tony White, please have a detailed description of the problem.
3. If Prime is completely nonfunctional, then continue to take calls following the guidelines stated below:
 - Family law calls
 - All family law calls are to be referred out or the caller can be invited to call back the following intake day. The chance of a conflict of interest is high.
 - Housing calls
 - All non-emergency cases are to be referred out
 - All UD or notice cases
 - If public or section 8 housing, do intake and give advice, collecting information in a word document
 - If private housing, refer out or invite client to call back the following intake day
 - Public Benefit / Health Access calls
 - All non-emergency cases are to be referred out
 - All emergency cases, do intake and give advice, collecting information in word document

4. Once Prime is operational, please record all “other service” and case information in Prime.

5. Call backs are not recommended but may be appropriate in some compelling instances. Please use your discretion.